

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1882 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KOLI AMARSINH GELA

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL, Advocate for the Petitioner .

MR.UR BHATT,AGP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/07/96

ORAL JUDGEMENT

Petitioner Koli Amarsinh Ghela ( hereinafter referred to as "the detenu" ), who is detained by an order dated 5-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ( hereinafter referred to as " the Act" ) by the District Magistrate, Surendranagar ( hereinafter referred to as "

the detaining authority" ) , has challenged the said order of his detention by way of this petition under Article 226 of the Constitution of India.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three prohibition cases registered against the detenu . These cases are of 1994 and 1995. The detaining authority has also placed reliance on the statements of six witnesses, whose identity is not disclosed to the detenu claiming privilege under sub-section (2) of section of of the Act. After considering these materials, the detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) of the Act and with a view to preventing the him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is required to be allowed on the first contention advanced on behalf of the petitioner and, therefore, it is not necessary to refer to and deal with the other contentions raised in the petition. Ms Patel on behalf of the petitioner submitted that the detaining authority has also relied on the old cases registered against the detenu under the Bombay Prohibition Act wherein the detenu was acquitted by the competent Court. Therefore, according to her, the impugned order is vitiated on the ground of the same having been passed on consideration of the extraneous material.

Reading the grounds of detention, the detaining authority has given reasons for acquittal of the detenu in five prohibition cases of Chotila Police Station being C.R. Nos.2/92, 1/93, 3/93, 34/93, 46/93. In the first four cases it was because the Panchas in those cases turned hostile ,whereas in the last case it was because the prosecution did not examine the complainant . Now, these cases are old cases and therefore stale and they could not have been taken into consideration while passing the order of detention. Moreover, when the detenu is acquitted not on technical ground by the competent court, it is a matter of surprise how the detaining authority could believe that the detenu was in fact involved in the commission of the said offences. It was because the Panchas, may be, they were got up, had not supported the prosecution or the prosecution had not examined the complainant, may be the complaint itself was

false. Not only the detaining authority has relied on the fact of the acquittal of the detenu because the Panchas had not supported the prosecution, but it has also relied on the circumstance of the recovery of equipments and articles for manufacturing country liquor in the said cases. I, therefore, fail to see any logic behind the detaining authority believing that the detenu was involved in the commission of the said offences. The competent Court has not acquitted the detenu on any technical ground. In any case, when, in the instant case, the detaining authority has taken into consideration the old and stale cases, particularly when those cases resulted into acquittal of the detenu, there cannot be any other better case of non-application of mind on the part of the detaining authority in basing his subjective satisfaction on the extraneous consideration.

In the result, this petition is allowed. The impugned order of detention dated 5-2-1996b is quashed and set aside. The detenu Koli Amarsinh Ghela is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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